

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ESTELLA A. BOYD)	
Claimant)	
VS.)	
)	Docket No. 163,905
PRESBYTERIAN MANORS OF MID-AMERICA, INC.)	
Respondent)	
Self-Insured)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant requested review of the Order dated May 22, 1997, entered by Administrative Law Judge Bryce D. Benedict.

APPEARANCES

Frank D. Taff of Topeka, Kansas, appeared for the claimant. Gregory D. Ballew of Wichita, Kansas, appeared for the respondent, a self-insured.

RECORD AND STIPULATIONS

The Appeals Board considered the transcript of the hearing held before Administrative Law Judge Benedict on May 21, 1997.

ISSUES

Claimant's counsel requested Administrative Law Judge Benedict to recuse himself from this proceeding. By Order dated May 22, 1997, the Judge refused. Claimant now requests the Appeals Board to review that Order and requests the Appeals Board to order this proceeding reassigned to another administrative law judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the appropriate record, the Appeals Board finds as follows:

Claimant's request for review should be dismissed.

Claimant contends Judge Benedict should recuse himself from this proceeding because he has prejudged the issue whether claimant's psychiatric condition is related to her work-related accident. At the May 1997 hearing where claimant formally presented the request for recusal, claimant's counsel summarized the issues and argument as follows:

And I don't state here that I believe, I don't believe that Your Honor is ill willed. I don't believe that you have anything against me personally or against Ms. Boyd, but I think that you have prejudged the matter because you have stated unequivocally and clearly and adamantly that the need for psychiatric treatment is not due to a work-related injury. This is without having heard or considered the deposition testimony of, of Dr. Nance.

And you have seen what was previously in the file concerning Dr. Nance, he was the treating physician to whom she was referred by Judge Ward at the, with the agreement of Mr. Hollander. Given the fact that you had reviewed the file thoroughly and that you ruled that the need for psychiatric treatment is not due to a work-related injury, I would not anticipate that you would be in a position to reverse yourself or change your mind and that, I believe, constitutes prejudgment, I believe. I mean, it's not a bad thing that a person may sometimes prejudge things but the question is, is it fair to proceed with the case and the posture that it's in given the rulings that you've made based upon the evidence that you've seen.

K.S.A. 44-523, as amended, provides that administrative law judges should insure the parties an expeditious hearing and act reasonably without partiality. As seen from the above-quoted statements, claimant does not contend the judge has acted impartially.

Neither the Kansas Workers Compensation Act nor the Director's Rules provide for a procedure to address a party's request for recusal or to address allegations of bias and prejudice on part of an administrative law judge. Thus, the issue becomes whether the Appeals Board has the authority to remove an administrative law judge from a proceeding.

The statute that creates the Appeals Board, K.S.A. 44-555c, as amended, states:

(a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and *awards of compensation of administrative law judges* under the workers compensation act. The review by the board shall be upon questions of law

and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. (Emphasis added.)

The statute that pertains to the Appeals Board's jurisdiction and authority to review preliminary hearing matters, K.S.A. 1996 Supp. 44-534a, states:

(a)(2) . . . A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

Additionally, K.S.A. 1996 Supp. 44-551(b)(1) which also addresses the Appeals Board's authority states in pertinent part:

. . . All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. . . . On any such review, ***the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings.*** (Emphasis added.)

Based upon the above statutory framework, the Appeals Board finds its jurisdiction is generally limited to issues related to the awarding of benefits, the compensability issues surrounding the claims for benefits, and certain ancillary matters directly affecting those claims. The Appeals Board does not have the jurisdiction or authority to order an administrative law judge to recuse himself from a proceeding or the authority to remove an administrative law judge from a proceeding or order reassignment of a claim. That authority rests with the Director of the Division of Workers Compensation who is the authority in charge of the Division's administrative law judges.

In its brief respondent requested an award for its expenses in defending claimant's request for Judge Benedict's recusal. Because the expense request was not an issue raised before the Administrative Law Judge, the Appeals Board will not address it for the first time on this review. See K.S.A. 44-555c, as amended.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's request for review of the Order dated May 22, 1997, entered by Administrative Law Judge Bryce D. Benedict should be, and hereby is, dismissed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

DISSENT

K.S.A. 44-551(b)(1) provides in pertinent part that:

“All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board”

We would find that the Appeals Board has jurisdiction to review the Administrative Law Judge’s Order based upon the above language. Rather than dismiss this appeal, we would affirm the Administrative Law Judge’s Order on its merits.

BOARD MEMBER

BOARD MEMBER

c: Frank D. Taff, Topeka, KS
Gregory D. Ballew, Wichita, KS
Michael J. Unrein, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director